

GST withholding provisions

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Gst withholding provisions for new residential premises and land subdivisions – recap on the new provisions and practical considerations!

On 7 February 2018 the Commonwealth Government introduced legislation into Parliament containing several significant changes to how the GST collection provisions will operate – these new provisions are now law. Importantly, the process for the collection of GST on the sale of

new residential premises (new houses or apartments) and new residential land subdivisions (house and land packages) will be substantially different.

Why the change to the legislation?

As outlined in our earlier Tax Alerts, in the May 2017 Federal Budget the Government confirmed that they would introduce a number of measures to target alleged “Phoenix” activity in the residential property industry. Specifically, the Australian Taxation Office (ATO) has identified that some developers have been failing to remit GST collected on the sale on new residential properties despite having claimed GST credits on the construction costs incurred.

What was the announcement?

From 1 July 2018, purchasers of “new residential premises” or “potential residential land included in a property subdivision plan” will be required to withhold an amount of GST from the purchase price and remit it directly to the ATO. This is a significant change from the previous position where developers are able to receive the GST inclusive sale proceeds and hold onto the GST component until they lodge their applicable Business Activity Statement (BAS). Importantly, the measures require that the withholding amount must be paid on or before the day on which any consideration for the supply (other than as a deposit) is first provided. Usually, this will be at settlement, however for contracts payable by instalments, the obligation to pay will be triggered at the time of the first instalment.

What are the key details?

The most significant details are as follows:

- The amount withheld is 1/11th of the contract price to give certainty to vendors and purchasers, rather than being applied to the amount after settlement adjustments
- When the margin scheme applies, the default amount withheld is a set rate of 7% of the contract price:
- It is noted that the ATO have the power to impose a higher withholding rate than 7%, but it cannot exceed 9%
- Where there are multiple purchasers, the supply will be treated as separate supplies to each purchaser, and each purchaser will be required to withhold the appropriate portion of the price
- There is no time limit on vendors to give the required notice and it is expected that it will be sufficient to do so within the contract of sale
- Failure to provide the notice is a strict liability offence with fines (per transaction) of up to \$21,000 for individuals and \$105,000 for companies
- A transitional rule ensuring that contracts entered into before 1 July 2018 will not be impacted by the new provisions, as long as the consideration for the supply (other than the deposit) is first provided before 1 July 2020

How is this likely to impact me?

There has been uncertainty amongst developers, conveyancers and other affected stakeholders as to the practicalities of the collection of GST and reporting process under the new rules. In August this year the ATO released practical guidance information on their website to assist; a summary of the expected collection and reporting process follows:

1. Vendor to notify purchaser of withholding obligation including the amount to withhold, when they need to pay, and the vendor's ABN and name. Most standard form land contracts are being updated to include all of this information.
2. Purchaser lodges "GST property settlement withholding notification online" form once the contract has been finalised – the purchaser will automatically receive an email from the ATO with a Payment Reference Number (PRN) and a Lodgement Reference Number (LRN).
3. Purchaser lodges "GST property settlement date confirmation online" form – this needs to be completed on or before settlement date, in order to confirm settlement has occurred.
4. Payment can be made electronically by the purchaser directly to the ATO using the PRN, and they will receive email confirmation right away. If they are instead paying by mail, they must include a "purchaser GST withholding" payment slip. The purchaser can send in the mail directly to the ATO or provide the vendor with the payment slip along with the cheque/money order (made payable to the "Commissioner of Taxation"). In this case, the vendor assumes responsibility for payment as an agent, and the purchaser no longer has any risk of penalties.
5. The vendor will be notified via email (based on the PRN linked to their ABN) that the withholding payment has been received, and therefore a GST property credit amount is available.
6. The vendor will then will lodge its Business Activity Statement and calculate its actual GST position, which will be offset by the GST property credit from amounts withheld and paid to ATO by purchaser/s. This GST property credit will automatically transfer to the vendor's activity statement account.

If you would like further information on how these changes may impact you, please contact your [Fordham Partner](#).

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